

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5340 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUDHABEN J DESAI

Versus

DIST HEALTH OFFICER

Appearance:

MR MS RAO for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/03/98

ORAL JUDGEMENT

1. The petitioner, a Class-II Medical Officer of the Health and Family Welfare Department of the Government of Gujarat, filed this special civil application before this Court and prayer has been made for quashing and setting aside of the order, annexure 'B' dated 2-5-1986 of the respondent No.1 under which it has been declared that the act of the petitioner of taking over the charge of the Kendra at Karjan is not recognised. This Court has not

granted any interim relief to the petitioner.

2. The facts of the case, in brief, are that the petitioner's services were placed under the disposal of the respondent No.1 at Primary health Centre at Erthan with effect from 16th February, 1976. On 4-4-1982, the petitioner came to be transferred from Primary Health Centre, Erthan to Primary Health Centre, Karol, Dist. Surat. On 5-4-1982, the petitioner was relieved in pursuance of the order dated 4-4-1982 from Erthan kendra and the charge of the petitioner was taken over by Mr. Bapna on the same day. Against this order of transfer and taking over the charge of the petitioner, she made a representation to the State Government. On 21-4-1986, the respondent No.2 revoked the order of transfer of the petitioner dated 4-4-1982 and she was ordered to be transferred to Primary Health Centre, Karanj. She took over the charge at Karanj on 1-5-1986 and submitted her Certificate of Transfer of Charge to the respondents No.1 and 2. On 2-5-1986, the respondent No.1 passed the impugned order considering the act of the petitioner to take over the charge of kendra at Karanj to be illegal. On the same day, the respondent No.1 wrote a letter to the respondent No.2 wherein it is stated that the petitioner should not be transferred to Karanj centre because some complaints were received against the petitioner in regard to the period during which she was serving in the same Taluka in the past. So prayer has been made for revocation of the order of the respondent No.1 dated 21-4-1986. On 21-5-1986, the person who was earlier in charge of the Karanj centre came to be transferred from the said centre. It is not in dispute that on 16th September, 1986, the respondent No.2 passed the order under which she was ordered to be transferred to Primary Health Centre, Amod in District Bharuch. This petition has been filed on 29th September, 1986 but the order dated 16th September, 1986 has not been challenged. Further prayer has been made by the petitioner to pay to her the legitimate dues since 1977 by way of earned leave, half pay leave, maternity leave and other benefits.

3. The respondent No.1 has filed detailed reply to the special civil application. However, the respondent No.2 has not filed any reply to the special civil application. None is present on behalf of the respondents.

4. Heard the learned counsel for the petitioner and perused the special civil application and reply filed by the respondent No.1.

5. This petition had come up for admission before this Court on 2-4-1988, on which date, the petition was admitted and Court declined to grant any interim relief. So this petition had come up for admission after more than one year and seven months of the filing thereof.

6. The learned counsel for the petitioner fairly admits before this Court that the petitioner in pursuance of the order of the respondent No.2 dated 16th September, 1986 has not joined at Primary Health Centre at Amod, District Bharuch till date of filing of the petition or till the date on which this petition has come up for admission. He further admits that till date, the petitioner has not joined at Primary Health Centre at Amod in District Bharuch.

7. Challenge has been made by the petitioner in this special civil application to the order of the respondents under which her action to take over the charge at Karanj centre was held to be illegal. That order no more remains of any substance, effect or relevance after the order dated 16th September, 1986. The respondent No.2 has ordered for her transfer to Primary Health Centre, Amod, District Bharuch, and the petitioner should have complied with the said order. That has not been done in the present case. That apart, the petitioner has not challenged the order dated 16th September, 1986 of the respondent No.2 and she has no justification whatsoever in view of this fact not to join at Primary Health Centre, Amod, District Bharuch. The petitioner is a Class-II Officer of the State, and as such, she has to comply with the order of the State Government and in case she feels that the order is not legal then she may have a remedy to challenge it and pray for interim relief but even in a case where she has adopted the latter course and interim relief is not granted, she has no justification whatsoever not to comply with the said order. This conduct of the petitioner itself is sufficient for dismissal of this special civil application. Noncompliance of the order of the Government by its own officer or employee is a serious misconduct and on proof of the same the ultimate penalty may be of dismissal or removal or termination of services of the officer/employee of the Government.

8. There is yet another aspect. As stated earlier, after the order dated 16th September, 1986 of the respondent No.2, challenge to the order dated 2-5-1986 of the respondent No.2 is of little significance or substance. Whatever worth, legality or illegality in the

action of the petitioner to assume the charge at Karanj centre is there but without challenging the later order dated 16th September, 1986, challenge to the order dated 2-5-1986 of respondent No.1 is of no value or worth.

9. Taking into consideration the totality of the facts of this case, this petition is wholly misconceived and the same is dismissed. Rule discharged.

zgs/-